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8 **BEFORE THE**
9 **CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. OA2008-27

12 **SOLENA AMBER CLEMENTS**
218 West Valerio Street, Apt B
13 Santa Barbara, CA 93041
Occupational Therapist Assistant
14 Certificate No. OTA 1504

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Heather Martin (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the California Board of Occupational Therapy, Department of Consumer
21 Affairs.

22 2. On or about October 14, 2005, the California Board of Occupational Therapy (Board)
23 issued Occupational Therapist Assistant Certificate Number OTA 1504 to Clements, Solena
24 Amber (Respondent). The Occupational Therapist Assistant was in full force and effect at all
25 times relevant to the charges brought herein and will expire on August 31, 2011, unless renewed.

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1 with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
2 defined in Section 4022.

3 "(b) Use to an extent or in a manner dangerous or injurious to himself or herself, to any
4 other person, or to the public, or that impairs his or her ability to conduct with safety to the public
5 the practice authorized by his or her license, of any of the following:

6 "(1) A controlled substance as defined in Division 10 (commencing with
7 Section 11000) of the Health and Safety Code.

8 "(2) A dangerous drug or dangerous device as defined in Section 4022.

9

10 "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-
11 administration of any of the substances described in subdivisions (a) and (b) of this section, or the
12 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)
13 of this chapter or any regulation adopted pursuant to this chapter.

14 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
15 hospital or patient record, or any other record, pertaining to the substances described in
16 subdivision (a) of this section."

17 REGULATORY PROVISIONS

18 7. California Code of Regulations, title 16, section 4170, subdivision (f)(3) states:

19 "Occupational therapy practitioners shall refrain from using or participating in the use of
20 any form of communication that contains false, fraudulent, deceptive statements or claims."

21 CONTROLLED SUBSTANCE / DANGEROUS DRUG CLASSIFICATIONS

22 8. Norco is a brand name for a combination narcotic containing hydrocodone and
23 acetaminophen. Hydrocodone is a Schedule II controlled narcotic substance pursuant to Health
24 and Safety Code section 11055(b)(J), and a dangerous drug pursuant to Business and Professions
25 Code section 4022. Acetaminophen is a Schedule III controlled substance as designated in Health
26 and Safety Code section 11056(e)(2), and is categorized as a dangerous drug pursuant to Business
27 and Professions Code section 4022. Norco contains 7.5 mg or 10 mg of hydrocodone and 325 mg
28 of acetaminophen.

9. Vicodin is a brand name for another combination narcotic containing hydrocodone acetaminophen. It is a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e), and is a dangerous drug within the meaning of Business and Professions Code section 4022. Vicodin pills normally contain 5 mg of hydrocodone and 500 mg of acetaminophen.

COST RECOVERY

10. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially-Related Crime)

11. Respondent is subject to disciplinary action under section 490, and section 2570.28, subdivision (e), as a result of Respondent's conviction of a crime that is substantially related to the qualifications, functions, and duties of an occupational therapist assistant. The facts and circumstances are as follows:

a. On or about July 29, 2008. Officers of the Camarillo Police Department met with Respondent as part of an official police investigation triggered by a physician who had reported that Respondent had phoned in a Norco prescription for herself, pretending to be the physician.

b. Respondent admitted this misrepresentation to the officers, and further admitted that she had made similar fraudulent calls to area pharmacies approximately a dozen times in the past year in order to successfully obtain prescription Norco and/or prescription Vicodin. Based on these admissions, the officers placed Respondent under arrest.

c. On or about August 19, 2008, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Health and Safety Code section 11173, subdivision (a) [fraudulently obtaining a controlled substance], in the criminal proceeding entitled *The People of the State of California v. Solena Amber Clements* (Super. Ct. Ventura County,

2008, No. 2008031037). Respondent was sentenced to one day in jail and placed on three years probation.

SECOND CAUSE FOR DISCIPLINE

(Fraudulent Acts)

12. Respondent is subject to disciplinary action under section 2570.28, subdivision (h), as a result of committing fraudulent acts that are substantially related to the qualifications, functions, and duties of an occupational therapist assistant. Complainant refers to and incorporates all the allegations contained in paragraph 11, subparagraphs (a) through (c), inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Illegal Possession, Prescribing, and Self-Administration of a Controlled Substance)

13. Respondent is subject to disciplinary action under section 2570.28, subdivision (a), in conjunction with section 2570.29, subdivision (a), as a result of: (1) Respondent's illegal actions to obtain and possess Norco and Vicodin; (2) her fraudulent prescribing of these drugs for herself when she was not authorized to do so and through fraudulent means; and (3) her illegal self-administration of Norco and Vicodin. Complainant refers to and incorporates all the allegations contained in paragraph 11, subparagraphs (a) through (c), inclusive, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Dangerous Drug Usage)

14. Respondent is subject to disciplinary action under section 2570.28, subdivision (a), in conjunction with section 2570.29, subdivision (b), as a result of Respondent's use of controlled substances and dangerous drugs in a manner that was injurious to herself and others. Complainant refers to and incorporates all the allegations contained in paragraph 11, subparagraphs (a) through (c), inclusive, as though set forth fully.

FIFTH CAUSE FOR DISCIPLINE

(Drug-Related Conviction Involving False, Fraudulent, and Deceptive Claims)

15. Respondent is subject to disciplinary action under section 2570.28, subdivision (a), in conjunction with section 2570.29, subdivision (c), as a result of Respondent's drug-related

conviction that involved false, fraudulent claims and deceptive claims. Complainant refers to and incorporates all the allegations contained in paragraph 11, subparagraphs (a) through (c), inclusive, as though set forth fully.

SIXTH CAUSE FOR DISCIPLINE

(Fraudulent Communications)

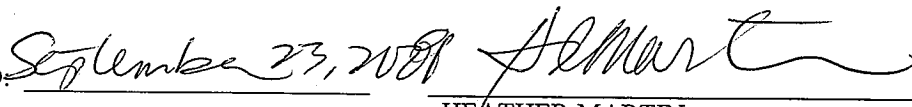
16. Respondent is subject to disciplinary action under section 2570.28, subdivision (c), in conjunction with California Code of Regulations, title 16, section 4170, subdivision (f)(3), as a result of Respondent's fraudulent communications with pharmacies, in which she pretended to be a physician phoning in prescriptions in order to obtain Norco and Vicodin. Complainant refers to and incorporates all the allegations contained in paragraph 11, subparagraphs (a) through (c), inclusive, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Occupational Therapy issue a decision:

1. Revoking or suspending Occupational Therapist Assistant Number OTA 1504, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: September 23, 2008


HEATHER MARTIN
Executive Officer
California Board of Occupational Therapy
Department of Consumer Affairs
State of California
Complainant

LA2009602420